

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FRANCIS HARVEY & SONS, INC.,

Plaintiff,

v.

**COMMISSIONER OF THE
INTERNAL REVENUE SERVICE,**

Defendant.

**Civil No.
04-40228-FDS**

**MEMORANDUM AND ORDER STAYING
PROCEEDINGS PENDING APPEAL OF RELATED CASE**

SAYLOR, J.

This is a case involving penalties for the nonpayment of employee payroll and unemployment taxes. Plaintiff originally brought three actions, now consolidated, appealing three adverse Notices of Determination by the Internal Revenue Service Office of Appeals. A similar proceeding between these parties, raising largely identical issues, is presently on appeal before the United States Court of Appeals for the First Circuit. *Francis Harvey & Sons, Inc. v. Comm'r of the Internal Revenue Serv.*, Docket No. 05-1051.

At the Status Conference on September 21, 2005, both parties expressed the view that legal issues common to both cases are likely to be resolved by the Court of Appeals, and that a stay of this proceeding is appropriate. Accordingly, on joint motion of the parties, this proceeding is hereby stayed pending a decision by the Court of Appeals. The parties shall jointly notify the Court of the decision of the Court of Appeals in writing reasonably promptly after the decision. The clerk shall schedule a further status conference on or about thirty days from the decision of

the Court of Appeals.

So Ordered.

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge

Dated: September 23, 2005